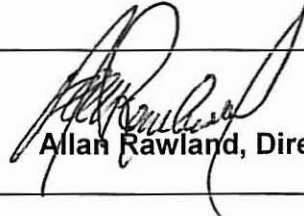


**County of San Bernardino
Department of Behavioral Health**

Client Privacy and Confidentiality of Protected Health Information

Effective Date 01/03/07
Approval Date 01/03/07


Allan Rawland, Director

Policy It is the policy of the Department of Behavioral Health (DBH) that staff adhere to State confidentiality and privacy laws and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and to apply those laws and regulations which provide the greatest degree of protection and autonomy for its clients, within the scope of providing care and treatment. All members of DBH's workforce are responsible for adhering to this policy. **(Refer to Definitions at end of this policy)**

Purpose To outline the systems in place at DBH that govern and provide guidance about privacy and confidentiality of client Protected Health Information (PHI).

Compliance If requested, DBH will provide records and compliance reports related to its privacy and confidentiality programs to the Secretary of Health and Human Services. DBH will cooperate with compliance investigations and reviews by state and federal oversight agencies.

Administrative Requirements DBH, as a covered entity under HIPAA, must adhere to the following administrative requirements:

Requirement	Description
Personnel Designations	<ul style="list-style-type: none">• Designate a Privacy Officer who is responsible for the development and implementation of the privacy policies and procedures at DBH• The Privacy Officer is designated as the contact person for client and employee privacy and confidentiality complaints and provides information about matters covered by HIPAA and other privacy and confidentiality issues

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	<ul style="list-style-type: none"> The Privacy Officer is available to advise staff concerning the requirements of both State Law (W&I Code 5328) and HIPAA, and to facilitate resolution of possible conflicts between these laws. The Privacy Officer is also available to advise staff concerning requirements of 42 CFR and to facilitate resolution of possible conflicts between HIPAA, 42 CFR and State Law
Training of Workforce	The entire DBH workforce will receive training on HIPAA privacy policies and procedures to the degree necessary and appropriate to carry out their duties and responsibilities regarding PHI at DBH.
Safeguards	DBH will take reasonable steps to safeguard PHI from intentional or unintentional misuse, regardless of medium (electronic, hard-copy, etc.). DBH will have appropriate administrative, technical, and physical safeguards in place to protect the privacy of PHI. Additionally, DBH will limit incidental users or disclosures of PHI that are made pursuant to an otherwise permitted or required use or disclosure.
Waiver of Rights	DBH cannot require clients to waive their right to file a privacy and/or confidentiality complaint with the Office of Civil Rights, US Department of Health and Human Services, as a condition for treatment, payment, or billing for services provided, nor can DBH require workforce members to waive their rights to file a privacy and/or confidentiality complaint with the Office of Civil Rights, US Department of Health and Human Services as a condition of employment.
Documentation	DBH must maintain the policies and procedures related to privacy and confidentiality of PHI in written or electronic form, and retain PHI for six (6) years from the date of creation or the date when they were last in effect, whichever is later. See Security of Protected Electronic Health Information policy.

Uses and Disclosures of Protected Health Information

PHI will be used for treatment, payment or billing activities, and for necessary operations. PHI will be disclosed as permitted by applicable laws and/or regulations, or in accordance with an authorization signed by the clients or their legal representative.

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See [Authorization to Release Confidential Protected Health Information](#) policy.

Minimum Necessary

The use and disclosure of PHI shall be restricted to the minimum necessary to fulfill the reason for the use, request or disclosure of PHI.

Notice of Privacy Practices

Each client will be provided information in writing, in the language of their preference, about their privacy rights and how their PHI may be used and disclosed. See [HIPAA Notice of Privacy Practices](#) policy.

Request for Privacy Protection

A client has the right to request restriction of uses and disclosures of their PHI. DBH must permit a client to request that the use or disclosure of their PHI be restricted. DBH is not required to agree to a requested restriction.

Client Access to PHI

To the extent permitted by law, a client has a right of access to inspect and obtain a copy of their PHI in the designated record set, for as long as the PHI is maintained in the designated record set. See [Client Access and Amendment of Medical Record](#) policy.

Amendment of PHI

The client has the right to request amendment/correction of PHI of a document in a designated record set. Such requests will be made in writing on the appropriate form set. See [Client Access and Amendment of Medical Record](#) policy.

Accounting of PHI Disclosures

1. To the extent permitted by law, a client has the right to receive an accounting of PHI disclosures made by DBH in the six years prior to the date on which the accounting is requested, except for disclosures:
 - To carry out treatment, payment or billing, and health care operations
 - To the client
 - Pursuant to an authorization signed by the client or client's representative
 - For national security or intelligence purposes
 - To correctional institutions or law enforcement officials
 - To the courts or court officials
 - That occurred prior to the HIPAA compliance date (April 14, 2003)
2. Clients may request one (1) accounting of disclosures free of charge every twelve (12) months. Additional requests within the same

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12-month period will result in a charge to the client.

Business Associate Agreements

1. DBH may disclose PHI to a business associate and may allow a business associate to create or receive PHI on its behalf, if DBH obtains satisfactory assurance that the business associate will appropriately safeguard the information.
 2. DBH must document the satisfactory assurance required by this section through written contract or other written agreement or arrangement with the business associate.
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Research

1. DBH may use or disclose PHI for research provided that the research meets all applicable State or Federal laws or regulations. DBH may use or disclose PHI for the research project, but if it is not authorized by the subject client, then the PHI must be de-identified on all documents to the extent required by law.
 2. All research requests must be approved through the DBH's Institutional Review Board (IRB).
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Definitions

- **Preemption of State Laws:** In cases of perceived conflict among laws and/or regulations, the general rule is that precedence is given to the law and/or rule which provide the client with the greatest protection of client privacy or autonomy. However, with regard to specific disclosures, if the disclosure is required by law (whether State or Federal); the disclosure is permitted without constituting a violation of law. Questions regarding pre-emption issues may be directed to the DBH Privacy Officer
- **Business Associate:** A person who, on behalf of a covered entity, but other than in the capacity of a member of the workforce of such covered entity, performs or assists with a function or activity involving the use or disclosure of individually identifiable health information
- **Covered Entity:** A health plan, healthcare clearinghouse, or healthcare provider that transmits any health information in electronic form
- **Designated Record Set:** Any and all constituent parts of the medical and billing records, regardless of authorship and media type (electronic, paper, microfiche or verbal). These medical and billing records are the property of San Bernardino County and DBH and may not be reproduced or removed from DBH except as prescribed by State and Federal law and DBH policies and procedures consistent therewith.
- **Disclosure:** The release, transfer, provision of access to, or divulging in any other manner of, PHI outside the covered entity holding the

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information. Individually Identifiable Health Information (IIHI) is information including demographic information collected from an individual, and created or received by a healthcare provider, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and that identifies the individual, or to which there is a reasonable basis to believe the information can be used to identify the individual

- **Protected Health Information (PHI):** Individually identifiable health information that is transmitted or maintained in any form or medium (electronic, paper, microfiche or verbal)
- **Use:** With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within a covered entity that maintains such information
- **Workforce:** Employees, volunteers, trainees, students, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity

References

- Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Privacy Rule (HIPAA)
 - California Welfare and Institution Code, Section 5328 et seq. (Lanterman-Petris-Short Act)
 - Health and Safety Code (Information Practices Act of 1977), Section 1798 et seq.
 - Title 42 of the Code of Federal Regulations CFR, Section 2.1 et seq.
 - California Civil Code 56 et seq. (The Confidentiality of Medical Information Act)
 - California Health & Safety Code 123100 et seq. (Client Access to Health Records)
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